



QUESTIONS AND ANSWERS

March 21, 2000

INS Issues Final Regulations for NACARA Section 202

- 1. Has there been any change of the establishment of physical presence for NACARA section 202 applicants?**

A. There has been no change in the regulations regarding physical presence for NACARA section 202 applicants. However, the documentation required of NACARA applicants has been made more flexible. INS will allow submission of private and religious school records if they represent a period when the applicant was under 21 years old at the time. The final regulations also allow an applicant to submit copies of other documents submitted to any level of government, not just issued by the government agencies. The regulations also permit applicant to include tax returns, applications and other documents which demonstrate presence in the United States.

- 2. What are the changes regarding the documents that need to be submitted for establishment of physical presence?**

A. The final NACARA regulations allow an applicant to submit documents pertaining to other family members, once the family household has been established. The regulations also allow for submission of records from any organizations chartered by the government (public utilities, banks, etc.). The final rule removes the "90-days guideline" which requires applicants to provide one document every 3 months to demonstrate continuity of physical presence in the United States.

- 3. Can a lawful permanent resident (LPR) readjust his or her status for the purpose of bringing dependents without a visa number to the United States?**

A. The readjustment by persons already lawful permanent residents (LPRs) is not allowed except in removal proceedings.

- 4. Will INS process an advance parole application for a NACARA dependent at this time or is it too late?**

A. INS cannot guarantee that any application submitted for advance parole will be adjudicated in time for the eligible NACARA dependent to apply for benefits.

5. **Is a family cap or fee waiver in place for NACARA applicants? How does an applicant apply?**

A. The Department of Justice considered but decided not to create a family cap for fees for adjustment of status applicants under NACARA. DOJ believes that a fee waiver is a more equitable procedure, which incorporates the Federal Poverty Guidelines. Fee waivers take into account family size and do not require a separate fee analysis. Furthermore, DOJ believes that a fee waiver would provide assistance to indigent families regardless of the family size. On the other hand, a family cap would benefit those who have large families, regardless of their financial situation. In order to create a new fee structure, a separate fee analysis would be required.

6. **What will happen if an applicant submits an application before the filing deadline with a request for a waiver of the filing fee and the waiver request is subsequently denied by INS?**

A. If an applicant submits his or her application before the filing deadline (March 31, 2000) with a request for a waiver of the filing fee, but that fee waiver request is subsequently denied by INS, the applicant will be sent written notice of that decision. He or she will then have 30 days from the date of the decision in which to submit the required filing fee. If the fee is submitted within that 30-day period, the application will be considered to have been filed by the statutory filing deadline, even if the fee is received after April 1, 2000.